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Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

RONALD K. SCOTT

Petitioner,

v.

KEITH B. QUIGLEY, ET AL.

Respondents.

On Petition for a Writ of Certiorari To The United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

(1) Whether prisoner's clearly established Eighth and Fourteenth Amendment rights are violated, giving rise to a cause of action under 42 U.S.C. §1983, when he is incarcerated for four additional days after a judge orders his release due to the implementation of a state policy requiring the judge's order to be transmitted to the correctional institution where he resides by U.S. mail.

PARTIES TO THE PROCEEDING BELOW

The following individuals are parties to the proceeding in the court below:

Ronald K. Scott, Jeffrey A. Beard, Raymond J. Sobina, District Attorney R. Scott Cramer, Assistant District Attorney Chad Chenot, Public Defender S.C. Walz, III, Clerk of Court Brenda Albright, Perry County, the Honorable Keith B. Quigley, President Judge, The Hon. C. Joseph Rehkamp, and Magisterial District James R. Moyer, Jr.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ronald Scott respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW AND JURISDICTION

The opinion of the Third Circuit Court of Appeals, Petitioner's Appendix 2-6, is available at 2007 U.S. App. Lexis 22776. The opinion of the District Court for the Middle District of Pennsylvania, Petitioner's Appendix at 7-22, is available at 2005 U.S. District Lexis 35692 and 2005 WL 1377893. The judgment of the Third Circuit was entered into on September 26, 2007. The judgment of the District Court was entered into on June 7, 2005. This Court has jurisdiction under 28 U.S.C. §1254. The District Court had had jurisdiction under 28 U.S.C. §1331: "The district courts shall have original

jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment to the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

42 U.S.C. §1983 provides in pertinent part that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof

to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

1. Ronald Scott paid his bail on February 13, 2002. Raymond Sobina Declaration[1] at para. 8. Scott's lawyer filed a Writ of Habeas Corpus on February 22, 2002. On February 25, 2002, Mr. Scott sent a communication to Defendant Sobina, the warden of the correctional institution at which he was housed, informing Mr. Sobina that his bail had been paid. Defendants have not presented at any level any evidence that Defendant Sobina took any action as a result of Mr. Scott's communication. On

[1] The declarations of Raymond Sobina, Sheila Stailey, and Donald Harcom are available in the Third Circuit record.

or before February 27, 2002, the Department of Corrections was notified of Mr. Scott's *habeas corpus* petition and transported him to the Perry County Prison in order to appear the next day at his Writ of Habeas Corpus hearing. Harkcom Affidavit at para. 6. On Thursday, February 28, 2002, Mr. Scott attended a *habeas* hearing, where Judge Rehkamp granted Mr. Scott a Writ of Habeas Corpus as a result of his finding that Mr. Scott had made bail. [2]Petitioner's Appendix at 23-24. Under Pennsylvania

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[2] Judge Rehkamp granted Mr. Scott's writ subject to the terms and conditions of bail, which under 234 Pa. Code § 526 are that a bailee must:

(1) appear at all times required until full and final disposition of the case;

(2) obey all further orders of the bail authority;

(3) give written notice to the bail authority, the clerk of courts, the district attorney, and the court bail agency or other designated court bail officer, of any change of address within 48 hours of the date of the change;

(4) neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by Section 4952 of the

law, the *habeas* writ "lies to secure the writ of one who is detained unlawfully." Commonwealth v. Morman, 373 Pa. Super. 360, 541 A.2d 356 (1988).

On that same date, Sheila Stailey paid the alleged outstanding detainers for Mr. Scott. Stailey affidavit at para. 1. She returned receipt of these payments to the Perry County Clerk of Courts Office located at the Perry County Courthouse, Center Square, New Bloomfield, Pennsylvania (hereinafter the "Perry County Clerk's Office") between 12:30 PM and 12:45 PM. Id. While at the Perry County Clerk's Office, she was told that the proper paperwork would be sent to the State Correctional Institution at Somerset (hereinafter "SCI-Somerset"), where Mr.

Crimes Code (relating to intimidation of witnesses or victims) or by Section 4953 (relating to retaliation against witnesses or victims), 18 Pa.C.S. § § 4952, 4953; and

(5) refrain from criminal activity.

Scott was imprisoned. Id. at para. 2. Her payment was received, and the Perry County Clerk's office authorized its detainer against Mr. Scott to be lifted.

After returning home from the Perry County Clerk's Office (still on February 28, 2002), Stailey spoke to Tonya, secretary for Mr. Scott's attorney, Kevin Prosser, to tell her the detainers had been paid. In that conversation, Stailey told Tonya that the Perry County Clerk's Office said that the proper paperwork needed to be sent to SCI-Somerset in order for Ronald Scott to be released. Stailey Affidavit at para. 4. Tonya then responded that she would call the Perry County Clerk's Office to see if they could fax the proper paperwork instead of sending it to SCI-Somerset. Id. at para. 5. Tonya was told that the Clerk's Office said that SCI-Somerset had to have an original Order and that it could not be faxed to them, it must be mailed. Id. at para. 6.

Then on the same day, February 28, 2002, Stailey called the Perry County Clerk's Office to see whether she could drive a certified copy of the proper paperwork up to SCI-Somerset instead of having it mailed. Id. at para. 7. The person Stailey talked to at the Perry County Clerk's Office said that they had already sent the paperwork. Id. This person also said Stailey would just have to wait for SCI-Somerset to receive the paperwork. Id. This person told Stailey that SCI-Somerset should get the paperwork by Friday, but because it was a Friday, people might leave early for the weekend and Mr. Scott might not be released until Monday, March 4, 2002. Id.

SCI-Somerset did not release Scott until Monday, March 4, 2002, four days after Scott's bail and all alleged detainers were paid. Sobina Declaration at 9; Harkcom Declaration at 7. The Department of

Corrections' policy was that it would not release a prisoner due to bail without, "a certified court order allowing bail, an order setting bail and a signed receipt that bail was paid." Checklist attached to Pennsylvania Department of Corrections ("DOC") Bulletin Number 11.5.1-4.[3] The DOC interprets this policy as requiring a mailed copy of the certified order. Sobina Affidavit at 5; Harkcom Affidavit at 7 and final paragraph of the Affidavit which is misnumbered with a second 7.

2. Mr. Scott brought suit in the United States District Court for the Middle District of Pennsylvania under Section 1983 alleging that Defendants' continued imprisonment of him after a Judge had ordered his release violated, *inter alia*, his rights under the Eighth and Fourteenth Amendments to the United States Constitution.

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[3] This document is available in the record below.

Judge Caputo granted the Defendants' motion for summary judgment. Petitioner's Appendix at 7-22. Mr. Scott then appealed to the United States Court of Appeals for the Third Circuit, which denied his appeal September 26, 2007, without hearing oral argument. Petitioner's Appendix at 2-6.

REASONS FOR GRANTING THE WRIT

The Due Process Clause of the Fourteenth Amendment lays out one of the most fundamental principles of any nation governed by the rule of law: that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amend. XIV, Sec. 1. The Eighth Amendment further provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." And the United States Congress, in passing 42 U.S.C. §1983, has recognized that victims of Constitutional violations

are entitled to be made whole by American tort law like the victims of any other offense.

In the case at bar, Defendants continued to detain Mr. Scott for four days after he was granted a writ of *habeas corpus*. This was due to a policy that required regular mail transmission of the writ to the correctional institution, putatively due to concern for prison security. While prison operations are entitled to some deference, Turner v. Safley, 482 U.S. 78, 84-85, (1987), that deference is extremely limited in the Eighth Amendment context "because the integrity of the criminal justice system depends on full compliance with the Eighth Amendment." Johnson v. California, 543 U.S. 499, 510-511 (2005). Unless necessity is shown, searching judicial review is appropriate. Id.

Moreover, Defendants are not shielded by qualified immunity. Such immunity protects officials

whose "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The right to be promptly released after a writ of *habeas* is granted is evident, and its violation not shielded from suit.

I. Defendants Detained Mr. Scott For Several Days After Judge Rehkamp Granted His Writ, Violating His Eighth and Fourteenth Amendment Rights and Creating a Cause of Action Under Section 1983.

A. By Detaining Mr. Scott for Several Days After His Writ Was Granted, Defendants Imposed a Cruel and Unusual Punishment.

1. Imprisonment subsequent to a lawful order of release is *ipso facto* imprisonment without legal

authority. As such, it is a cruel, unusual, and unlawful punishment.

This Court's precedents are clear that overdetention may be a violation of the Eighth Amendment. For a sanction imposed by the state[4] to violate the Eighth Amendment, it must be cruel or unusual and punitive. Trop v. Dulles, 356 U.S. 86, 96 (1958). Imprisonment is a punitive sanction. Hutto v. Finney, 437 U.S. 678, 685 (1978).

Some punishments violate the Eighth Amendment because they are "always-and-everywhere 'cruel,'" such as the rack and the thumbscrew. Atkins v. Virginia, 536 U.S. 304, 349, (2002) (Scalia, J., dissenting). A punishment may also violate the Eighth Amendment if it violates the

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[4] The Eighth Amendment has been interpreted as incorporated to the states since Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947).

"evolving standards of decency that mark the progress of a maturing society." Trop, supra, 356 U.S. at 101.[5] Recently, the Supreme Court reaffirmed that "cruel and unusual punishments" must be judged by modern standards. Roper v. Simmons, 125 U.S. 1183, 1190 (2005). "Cruel and unusual" is a matter of proportion to the crime, and specifically "must be tailored to [the defendant's] personal responsibility and moral guilt." Emmund v. Florida, 458 U.S 782, 801.[6] For instance, "even one day in prison would be a cruel and unusual

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[5] The possibility of interpreting the Eighth Amendment in light of evolving standards was contemplated at the Founding. Furman v. Georgia, 408 U.S. 238, 321 at n.19 (Marshall, J., concurring), citing 1 Annals of Cong. 782-83 (1789).

[6] The principle that punishment must be tailored to guilt was handed down to us from the British legal tradition. See Hodges v. Humkin, 80 Eng.Rep. 1015, 1016 (KB 1615) ("imprisonment ought always to be according to the quality of the offense"), Earl of Devon's Case, 11 State Tr. 133, 136 (1689) (overruling a fine because it was "excessive and exorbitant, against magna charta, the common right of the subject, and the law of the land").

punishment for the 'crime' of having a common cold." Robinson v. California, 370 U.S. 660, 667 (1962). This Court has also struck a mandatory life sentence for overtime parking, a sentence of twelve to twenty years at hard labor for falsifying public records, and a life sentence without parole for a bounced check as "grossly disproportionate." Rummel v. Estelle, 445 U.S. 263, 273 (1980) , Weems v. United States, 217 U.S. 341, 381 (1910), Solem v. Helm, 463 U.S. 277, 279 (1983).[7]

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[7] While the application of the principle that the Eighth Amendment prohibits excessive and disproportionate non-capital punishments has been criticized, see Harmelin v. Michigan, 501 U.S. 957, 966-985 (opinion of Scalia, J.), this Court's jurisprudence had for decades prior and in numerous cases since interpreted the Eighth Amendment to provide such protection. See, e.g., Ewing v. California, 538 U.S. 11, 20 (2003), citing Harmelin, supra, at 996-997 (Kennedy, J., concurring): "The Eighth Amendment, which forbids cruel and unusual punishments, contains a 'narrow proportionality principle' that 'applies to noncapital sentences,'" a principle originating in Anglo-American legal thought in Section 20 of the Magna Carta and finding support, as well, in the 1689 Declaration of Rights' rejection of excessive bail and excessive fines (emphasis added). In this case, moreover, the issue is incarceration subsequent to a court order granting a writ of

In this case, whether the punishment imposed on Mr. Scott is proportional depends on whether this Court interprets a judicial writ of *habeas corpus* to be a decision an officer of a state correctional institution must abide by immediately, or one he may abide by at his leisure.

Moreover, the punishment imposed on Mr. Scott is unusual. As Justices Scalia and Marshall have noted, the primary precursor to the Bill of Rights, the 1689 Declaration of Rights, uses "cruel and unusual" and "cruel and illegal" interchangeably. Harmelin, supra, at 973-974, citing Furman, supra, at 318, (Marshall, J., concurring). Given the centrality of the Declaration of Rights to the Framers' understanding of "cruel and unusual," "unusual" must at least include "illegal"

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habeas corpus, rather than the proportionality of a lawfully imposed sentence.

punishments. And under Pennsylvania law, *habeas* relief is provided to those unlawfully, or illegally, detained. Morman, supra.

Moreover, such punishment is unusual in the colloquial sense. This Court has found that in a pretrial context, detention of more than 48 hours without a judicial finding legitimizing such detention is impermissible. County of Riverside v. McLaughlin, 500 U.S. 44, 58-59 (1991). In this case, Mr. Scott was detained for twice as long after Judge Rehkamp had issued an order setting him free. In contrast, the Seventh Circuit has found that even an eleven-hour delay in granting a prisoner's release gives rise to a jury question. Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988).

It would be relevant to this Court's Eighth Amendment inquiry if Mr. Scott's punishment had been sanctioned by legislatures, since "the clearest

and most reliable objective evidence of contemporary values is the *legislation* enacted by the country's legislatures," Atkins v. Virginia, 536 U.S. at 312 (emphasis added; citation omitted). See also Gregg v. Georgia, 428 U.S. 153, 175 (joint opinion of Stewart, Powell, and Stevens, JJ.). However, in this case, Mr. Scott's unlawful punishment resulted from the issuance of an internal Department of Corrections bulletin, which does not provide clear or objective evidence of Pennsylvania's values, let alone the nation's. Where unelected bureaucrats impose punishments by administrative fiat far from the light of democratic scrutiny, those punishments do not have the same democratic stamp of approval as those imposed pursuant to publicly debated legislation passed by representatives accountable to their constituents.

3. The court below did not apply any of this Court's numerous relevant precedents in evaluating Mr. Scott's Constitutional claims. Instead, the panel rested its decision on Mathews v. Eldridge, 424 U.S. 319, 335 (1976). However, Mathews deals not with unlawful incarceration but with Social Security benefits and with a Fourteenth Amendment property interest rather than a liberty interest. This Court has set out far more directly applicable precedent, such as the Turner line of cases.

In Turner and its progeny, this Court has recognized that prison operations are due deference. Turner, supra, at 84-85, Overton v. Bazzetta, 539 U.S. 126, 132 (2003), Banks v. Beard, 548 U.S. __, (2006). However, this Court has made clear that such deference does not shield an "exaggerated response," Turner, 482 U.S. at 87, and that deference is extremely limited where there are ready

alternatives for furthering the governmental interest. Id. at 90 (additionally requiring that courts consider the connection between a prison regulation and the governmental interest at stake; alternative means for prisoners to exercise the right at issue; and the impact on guards, other inmates, and the allocation of prison resources). In Johnson, supra, this Court explained further that where a prisoner's right need not "necessarily be compromised for the sake of proper prison administration," "searching judicial review" is appropriate. 543 U.S. at 510-511. Defendants' conduct in this case cannot withstand such searching review. In the pretrial context, this Court has placed explicit limits on the amount of time for which a prisoner may be held awaiting a probable cause determination. McLaughlin, supra. While the issues accompanying release of a prisoner are different than those facing officials preparing for

a probable cause determination, lower courts have consistently found that if anything, release should be a *more* expeditious process.

4. Qualified immunity does not shield defendants' unlawful conduct. Under Harlow, supra, qualified immunity protects officials whose conduct a reasonable person could have understood not to violate any of the plaintiff's rights. In this case, however, the right to promptly be released once a court orders it is self-evident. See McCurry v. Moore, 242 F. Supp. 2d 1167, 1178 (N.D. Fla. 2002) ("The underlying constitutional right is well established. When a prisoner's sentence has expired, he is entitled to release.") Defendants adopted a dilatory policy that would inevitably lead to the violation of Mr. Scott's constitutional rights and the rights of every prisoner placed in a similar situation.

The question of whether a right is clearly established

is considered *de novo*. Elder v. Holloway, 510 U.S. 510, 516 (1997), citing Pierce v. Underwood, 487 U.S. 552, 558 (1988). For a right to be clearly established, it is not necessary that "the very action in question has previously been held unlawful," merely that "the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640 (1987), cited in Cannon v. Macon County, 15 F.3d 1022 (11th Cir. 1994). Moreover, the fact that deliberate indifference has infected an administrative procedure for releasing prisoners rather than taking place only in an isolated incident provides no heightened immunity. Berry v. Baca, 379 F.3d 764 (9th Cir. 2004). In Berry, three arrestees detained between 26 and 29 hours – less than one-third of the overdetention imposed on Mr. Scott – brought suit against a sheriff in his official capacity. The Court of Appeals found that summary judgment was inappropriate because there

was a question of fact as to whether the county's policy amounted to deliberate indifference to the detainees' Constitutional rights. Similarly, in this case, the unreasonable and unnecessary use of regular mail rather than a fax or a sheriff reflects deliberate indifference to the certain overdetentions that will result from a multiple-day delay before the correctional institution in question can even begin processing the prisoner's release. See, e.g., Fowler v. Block, 2 F. Supp. 2d 1268, 1277-79 (C.D. Cal. 1998), rev'd on other grounds, 185 F.3d 866 (9th Cir. 1999) (""in the face of [a] state court's 'clearly established' release order, it was unreasonable for the [Sheriff] to do more than simply "check-out" the Plaintiff after he was returned to custody"), cited approvingly in Streit v. County of LA, 236 F.3d 552, 556 at n.1 (9th Cir. 2001).

At a minimum, summary judgment on this issue is inappropriate. Summary judgment should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.Proc. 56(c). To prevail, a moving party without the burden of proof must allege a lack of evidence which could meet the burden in question. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party may then defeat the motion by setting out, by affidavit or as otherwise provided in "Rule 56, "specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); "Fed.R.Civ.Proc. 56(e). In evaluating a summary judgment motion, the Supreme Court has

held that courts should draw all reasonable inferences in favor of the non-moving party. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150-151 (2000), citing Lytle v. Household Mfg., Inc., 494 U.S. 545, 554-555 (1990). In a Section 1983 case, a court's role is to determine whether "[t]aken in the light most favorable to the party asserting the injury, [] the facts alleged show the [defendants'] conduct violated a constitutional right," Saucier v. Katz, 533 U.S. 194, 201 (2001).

In the instant case, Defendants implemented a policy that was obviously going to result in the unwarranted punishment of every prisoner who was granted a *habeas* writ by delaying his release. This Court has held that where the risk of such unwarranted punishment is obvious, knowledge of the risk on the part of the defendants may be inferred. Farmer v. Brennan, 511 U.S. 825, 844

(1994). Consequently, Mr. Scott has raised a *prima facie* case that Defendants knowingly violated his rights. Whether such a violation constitutes deliberate indifference and so gives rise to Section 1983 liability is "a classic issue for a fact finder." See Davis v. Hall, 375 F.3d 703, 719 (8th Cir. 2004), citing Armstrong v. Squadrito, 152 F.3d 564, 577 (7th Cir. 1998). See also Berry, supra, at 769 (the factors contributing to a delay in implementing a prisoner's release are "issues of fact, however, not matters of law" and so questions for a jury rather than appropriate issues to resolve at summary judgment).

B. By Detaining Mr. Scott for Several Days After His Writ Was Granted, Defendants Violated His Fourteenth Amendment Right to be Free From Continued Detention.

1. A United States citizen may be deprived of his liberty only after being accorded due process of law. An administrative procedure that incarcerates him for several days after his release his been ordered deprives him of his liberty and affords him no process at all.

The Ninth Circuit has read this Court to suggest that an imprisoned individual may have a due process right to be released in a reasonable time after the reason for his detention ends. Brass v. County of Los Angeles, 328 F.3d 1192 (9th Cir. 2001), citing Baker v. McCollan, 443 U.S. 137, 144-46 (1979). Lower courts have repeatedly recognized a Fourteenth Amendment right "to be free from continued detention after it was or should have been known that the detainee was entitled to release." Cannon v. Macon County, 1 F.3d 1558, 1563 (11th Cir. 1993). See also Fairley v. Luman,

281 F.3d 913, 918 (9th Cir. 2002); Sanders v. English, 950 F.2d 1152, 1162 (5th Cir. 1992).

In the matter *sub judice*, once Judge Rehkamp signed Mr. Scott's writ of *habeas corpus*, it was and should have been known that Mr. Scott was entitled to release. To the extent that officials at SCI-Somerset were not aware for an additional four days, that delay was due to an official policy that inevitably delayed their receipt of Mr. Scott's writ.

Applying the Mathews test to overdetention, as the Third Circuit suggested, demonstrates Defendants' actions were constitutionally impermissible. Under Mathews, a court should balance three factors in determining the adequacy of procedural safeguards provided to individuals whose property interests are at stake: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest

through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. 424 U.S. at 332-335. Here, an interest in avoiding unlawful incarceration is very strong, stronger than any possible property interest. That freedom is "at the core of the liberty protected by the Due Process Clause." Foucha v. Louisiana, 504 U.S. 71, 80 (1992) (citing Youngberg v. Romeo, 457 U.S. 307, 316 (1982)). Indeed, "next to bodily security, freedom of choice and movement has the highest place in the spectrum of values recognized by our Constitution." Sample v. Diecks, 885 F.2d 1099, 1109 (3d Cir. 1989). As a result, Justice Kennedy has written, "where the right at stake is the right to be free from confinement at all" prisoners are entitled to

substantial procedural protections. Wilkinson v. Austin, 545 U.S. 209, 225 (2003).

It is certain that individuals will wrongfully be deprived of their protected liberty interest if the government employs a more time-consuming procedure, and the government has merely asserted but provided no evidence to support the contention that there is any fiscal or administrative benefit to using regular mail rather than a speedier means of communication. Forging a document and sending it through the mail, for instance, is not obviously more complicated than forging a document, faxing it, and calling for confirmation.[8] Indeed, mailing the original poses an unacceptable risk that it could be

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[8] Indeed, Pennsylvania permits faxed copies to be admitted into evidence in court – so Defendants would suggest that they can serve as the basis for a conviction or an acquittal, but not as a justification for release. See 42 Pa. C.S.A. §6109. Sending the order, or a copy, with the sheriffs who will return the prisoner to his correctional institution is likely to be more secure than either a fax or regular mail.

lost in the mail, requiring an additional hearing to issue a second "original" order.

Defendants' assertions fall well short of demonstrating that the policy in question is "necessary for proper prison administration," as required by Johnson, supra. Defendants have also not shown that alternative methods would be more expensive or more administratively complicated.

2. Qualified immunity does not shield defendants' unlawful conduct. As supra, qualified immunity protects officials whose conduct a reasonable person could have understood not to violate any of the plaintiff's rights. The right to be promptly released once a court orders it is self-evident. McCurry, supra.

3. At the least, summary judgment on this issue is inappropriate. Defendants have provided only a rote, conclusory assertion that transmitting

original orders by regular mail is essential to prison security. Courts draw all reasonable inferences in favor of the non-moving party at this stage of the litigation, Reeves, supra. Thus for summary judgment to be appropriate, defendants would have to have proffered enough evidence to convince this Court that it would be unreasonable to draw the inference that faxing Judge Rehkamp's order or sending it with the sheriffs who returned Mr. Scott to the prison would be equally consistent with the demands of prison security and the genuine need to avoid forgery and improper release of prisoners. The entire body of evidence submitted in support of this assertion is the statement that "This policy is necessary for security reasons and is required in order to guard against falsification of records and to ensure that the inmate's release is proper and in accordance with the Court's instructions." Sobina

Declaration at para. 6. This Court can and should give deference to the reasonable needs of prison operations under Turner, but that deference does not extend to shielding unlawful conduct based on brief, conclusory, and unsubstantiated assertions like Defendant Sobina's.

II. This Case Provides an Ideal Vehicle for Addressing the Important Legal Question of When a Plaintiff Subjected to Overdetention may Recover Under 42 U.S.C. §1983.

A. There is a split in the circuits on this issue.

1. There is no consensus in the lower courts on what constitutes a permissible length of time to effectuate an inmate's release. Berry v. Baca, 369 F.3d at 771. In Berry, the Ninth Circuit noted that it was not clear that the 48-hour period set out for pre-trial detention in McLaughlin, supra, was

appropriate for detention subsequent to court-ordered release, and that Lewis, supra, set out *no* zone of presumptive reasonableness. Id.

Since Berry, the Eighth Circuit has also addressed the issue in a number of cases, See, e.g. Russell v. Hennepin County, 420 F.3d 841(8th Cir. 2005); Golberg v. Hennepin County, 417 F.3d 808 (8th Cir. 2005); Luckes v. Hennepin County, 415 F.3d 936 (8th Cir. 2005) and Lund v. Hennepin County, 427 F.3d 1123 (8th Cir. 2005). The panel in Lund, summarizing, noted that in cases involving a 24 hour detention after an inmate was told he would be released "shortly after booking", Luckes, a 10 hour overdetention due to a new computerized prison management system, Golberg, and a six day overdetention due to an administrative error, Russell, that Circuit had upheld summary judgment in favor of administrators. 427 U.S. at 1127.

Consequently, the panel found that "Lund's claim... that the County's outprocessing procedures delayed his release for twelve hours with the knowledge of the County and its officials" was also inadequate. Id. Lund has been followed by numerous Eighth Circuit cases since. See, e.g., Pederson v. Hennepin County, 170 Fed. Appx. 14 (8th Cir. 2006), Oertwig v. Hennepin County, 162 Fed. Appx. 683 (8th Cir. 2006), Carter v. Hennepin County, 162 Fed. Appx. 682 (8th Cir. 2006), Sizer v. County of Hennepin, 162 Fed. Appx. 681 (8th Cir. 2006), Dye v. Hennepin County, 162 Fed. Appx. 678 (8th Cir. 2006), Murphy v. County of Hennepin, 162 Fed. Appx. 677 (8th Cir. 2006), and Heryla v. Hennepin County, 162 Fed. Appx. 676 (8th Cir. 2006). However, none of these appellate cases involve an overdetention of more than 24 hours.

The Seventh Circuit's seminal case on the

subject is Lewis, supra. As noted supra, it provides no zone of presumptive reasonableness to shield overdetentions from judicial review. Indeed, the Circuit has required justifications for even detentions as short as four hours. Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336 (7th Cir. 1985), Gramenos v. Jewel Companies, Inc., 797 F.2d 432 (7th Cir. 1986).[9]

The Fifth Circuit's caselaw is vaguer. Whirl v. Kern, 407 F.2d 781 (5th Cir. 1968), cert denied, 396 U.S. 901, 90 S. Ct. 210, 24 L. Ed. 2d 177, notes that a jailer's duty to effect his prisoner's release is

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[9] In a subsequent decision, the Circuit held that Bradley Center ticket scalpers who were detained up to twenty-one hours did not have a cause of action for their overdetention. Chortek v. City of Milwaukee, 356 F.3d 740 (7th Cir. 2004). However, Chortek dealt with individuals detained for less than one day rather than four, immediately subsequent to their arrest rather than subsequent to the issuance of an order granting their release, and delayed only by the "natural backlog in processing at PPS" rather than the inevitable result of government policy. Id. at 748.

breached after "a reasonable length of time," though considerably less than the nine months at issue in that case. Id. at 792. Applying Whirl, the Fifth Circuit also found that thirty days was unreasonable. Douthit v. Jones, 619 F.2d 527, 532 (5th Cir. 1980).

In sum, there is considerable disagreement within the circuits on the deference courts ought to provide for prison administrators in granting a reasonable amount of time to ensure a prisoner's release. However, the District Court for the District of Columbia recently found that "the great weight of precedent suggests that release must occur within a matter of hours after the right to it accrues, and that after some period of hours -- not days -- a presumption of unreasonableness, and thus unconstitutionality, will set in." Barnes v. District of Columbia, 2007 U.S. Dist. LEXIS 20856 (D.D.C.

2007), at 12.

As the D.C. District Court's conclusion suggests, while the circuits are divided on what amount of elapsing time will forfeit administrators' presumption of reasonableness, it is clear that in the matter *sub judice*, the Third Circuit's brusque dismissal of Mr. Scott's constitutional claims placed it on the most extremely deferential end of the spectrum in terms of standing up against state overdetention.

2. This case provides an opportunity for this Court to resolve the Circuit split by adopting a presumptive limit, akin to Mclaughlin's, for overdetention of prisoners whose release has been ordered or whose sentences have expired. Several decisions argue for a lower limit. See Brass, 328 F.3d at 1202 ("One might conclude that when a court orders a prisoner released - or when, for example, a

prisoner's sentence has been completed - the outer bounds for releasing the prisoner should be less than 48 hours"); Berry, 379 F.3d at 771-72 ("Applying McLaughlin's stringent proof requirement to post-release detentions of less than forty-eight hours would be difficult to reconcile with the fact that, for the plaintiffs at issue here, there has been a judicial determination that they are entitled to freedom from the criminal justice system. Thus, the societal interest in the processes that result in delay, while significant, may not be as weighty as in the probable cause context").

Analyzing those cases, one commenter has proposed a 24-hour presumptive limit.[10] Patricia E. Simone, NOTE, A Presumptive Constitutional Time Limit for Administrative Overdetention of Inmates

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[10] Justice Scalia proposed a 24-hour time limit for probable cause determinations in McLaughlin. 500 U.S. at 70 (Scalia, J., dissenting).

Entitled to Release, 81 Notre Dame L. Rev. 719, 738 (2006). *In the instant case,* McLaughlin's presumptive time limit was doubled – so whether or not the jurisprudence and scholarship suggesting a lower time limit is appropriate in this context are correct or feasible, the McLaughlin standard itself was dramatically exceeded and liability is appropriate. Moreover, the Eighth Circuit cases refusing to impose liability all dealt with shorter time periods. Consequently, the ambiguity of the caselaw on this issue is important, but does not in any way alter the conclusion that to incarcerate a prisoner for four days after he is granted a writ of *habeas corpus* violates his Constitutional rights.

Writing for the McLaughlin court, Justice O'Connor also explained why a bright-line rule is necessary and desirable:

> [A]s lower court decisions applying *Gerstein* have demonstrated, it is not enough to say that probable cause determinations must be "prompt." This vague standard simply has not provided sufficient guidance. Instead, it has led to a flurry of systemic challenges to city and county practices, putting federal judges in the role of making legislative judgments and overseeing local jailhouse operations.
>
> 500 U.S. at 55-56 (citations omitted).

Similarly, overdetention has been challenged in a wide variety of ways, and different Circuits have adopted different standards. A bright-line rule delineating where the zone of presumptive reasonableness, if any, ends, and when prisoners have a clearly established right to release, would end the proliferation of different "federal law" standards in different circuits, provide guidance to administrators and confidence in a genuinely prompt release to prisoners.

3. The circuit split does not mitigate against the conclusion that Mr. Scott's clearly established

Constitutional rights were violated. Initially, the appellate cases reflecting the proliferation of standards applied by different Circuits to cases like Mr. Scott's differ on whether the right to release in certain time periods is clearly established, not whether it exists. Moreover, while there is division among the Circuits about where to draw the line on overdetention, neither Defendants nor the Third Circuit have cited caselaw finding an overdetention this lengthy to be reasonable. In a legal context where the Circuits are deeply divided, the Third Circuit has dramatically decreased prisoners' legal recourse when subjected to administrative overdetention.

B. Overdetention is a serious and widespread problem.

1. Several circuits have had to confront suits challenging overdetention of prisoners. Los Angeles

County has been forced to settle a suit by a class of 400,000 overdetained inmates for $27 million. Simone, supra, at 721, citing Steven H. Pollak, *Georgia County Faces Class Action over Jail Procedures*, Recorder (S.F.), Apr. 30, 2004, at 3. Similar claims have arisen in Atlanta, Chicago, Washington, Hawaii, and now Pennsylvania. Id. at 719-720, citing Rhonda Cook, *Fulton Jailers Accused of Holding Inmates Too Long*, Atlanta J.-Const., Jan. 28, 2005, at A1; James G. Sotos, *Holding Pattern: Detainee States Claim*, Chi. Daily L. Bull., July 22, 2004, at 6; Jason Cherkis, *Hard Time: Federal Judge Slams the District for Overdetaining Inmates*, Wash. City Paper, April 4, 2007; Barnes, supra; Bynum v. District of Columbia, 214 F.R.D. 27, 42 (D.D.C. 2003); Tapaoan, et al. v. Hawaii, Civil No. 1-000815 (D.Hi. 2003) (settled for more than $1 million).

2. In each case, overdetention hits at the heart

of a society based on the rule of law: the principle that the government may not hold one of its citizens in custody without judicial approval. Federal courts have long recognized, as the Fifth Circuit did in Whirl, that to hold officials liable before a "reasonable" amount of time has passed would be unjust. However, without guidance from this Court, what constitutes a reasonable amount of time can and does vary case-by-case and circuit-by-circuit. On such a fundamental issue, a consistent rule is necessary and appropriate. Such a rule would provide prison officials better guidance and inmates awaiting release surety that they could expect to be released within a certain amount of time and, if not, that they would have legal recourse.

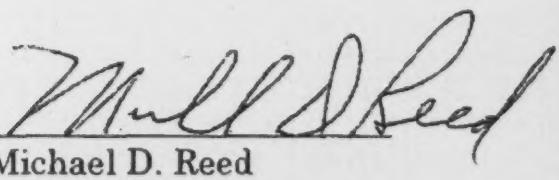
C. This Case is an Ideal Vehicle for Resolving the Question.

This case presents no extraneous issues. Defendants' statements are clear that Mr. Scott remained in prison subsequent to Judge Rehkamp's order granting his release due to official Department of Corrections policy, and give a cursory justification of that policy. See Sobina Declaration. This cursory justification is inadequate to support summary judgment, so the issue in the case is clear: whether an inmate who has been detained for several days after the issuance of a court order granting his release has a cause of action to recover.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted by,

Dated: 12/20/07 By: 

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RONALD K. SCOTT

Petitioner,

v.

KEITH B. QUIGLEY, ET AL.

Respondents.

Appendix

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-3330

RONALD K. SCOTT,
Appellant

vs.

KEITH B. QUIGLEY, Honorable Judge; JOSEPH REHKAMP, Honorable Judge; R. SCOTT CRAMER, District Attorney; CHAD CHENOT, District Attorney; S.C. WALTZ III, Public Defender; BRENDALBRIGHT, Clerk of Courts; ELIZABETH FROWNFETTER, District Justice; JAMES MOYER, JR., District Justice; JEFFREY A. BEARD, Commissioner, PA DOC; RAY J. SOBINA, Superintendent, SCI Somerset; PERRY COUNTY, PA; PA DEPT OF CORRECTSION.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 03-CV-00768)
District Judge: Honorable A. Richard Caputo

Submitted Under Third Circuit L.A.R.34.1(a)
September 18, 2007
Before: SLOVITER, SMITH and WEIS,
Circuit Judges
Filed September 26, 2007

Opinion

WEIS, Circuit Judge.

Plaintiff in this action was convicted of robbery in state court on April 17, 2000, and began to serve his sentence. The court granted bail, which plaintiff posted on February 13, 2002. At that time, he was imprisoned in State Correctional Institution at Somerset ("SCI-Somerset"). He was not released, however, because of detainers lodged against him.

On Thursday, February 28, 2002, the plaintiff's detainers were paid and the court ordered him released on bail. That same day, the Perry County Sheriff's Office sent a certified copy of the

order granting the plaintiff's released to officials at SCI-Somerset via United States Postal Service. SCI-Somerset received the order four days later on Monday, March 4. Upon receiving the documents, officials at SCI-Somerset completed verification procedures and approved the plaintiff's release that day.

At that time, Pennsylvania Department of Corrections policies required satisfaction of all outstanding detainers before an inmate could be released. Moreover, an inmate was not to be released on bail until prison officials received an original, certified court order allowing bail, an order setting bail, and a signed receipt that bail was paid. Defendant, Superintendent Sobina, stated that these policies were "necessary for security reasons and [were] required in order to guard against falsification of records and to ensure that the inmate's release is

proper and in accordance with the court's instructions".

Plaintiff alleges he was unlawfully detained during the four days that elapsed between the state court order and his actual release. He asserted numerous federal and state constitutional claims against various state officials. The District Court dismissed all of the plaintiff's claims except his Eighth and Fourteenth Amendment claims against corrections officials Sobina and Beard. Summary judgment was later entered in their favor. Plaintiff has appealed the grant of summary judgment.

The District Court dismissed the plaintiff's Eight Amendment claim because he did not show that defendants acted with deliberate indifference. See Moore v. Tartler, 986 F.2d 682,686 (3d Cirt, 1993). The evidence supports the District Court's conclusion that prison officials responded promptly

to the plaintiff's request for information and acted quickly to release him once they received the necessary paperwork. Moreover, plaintiff has not shown that he was denied due process. The regulatory procedures adopted by the Department of Corrections are reasonable and constitutional. See Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (applying three-part analysis to determine constitutionality of administrative procedures). The District Court, therefore, properly granted summary judgment for defendants.

Accordingly, we will affirm the Order of the District Court.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVNIA

RONALD K. SCOTT,	:
	:
Plaintiff,	:
CIVIL ACTION NO. 3:03-CV-768	:
	:
v.	:
	:
(JUDGE CAPUTO)	:
	:
KEITH B. QUIGLEY, et al.,	:
	:
Defendants.	:
	:

MEMORANDUM

Presently before the Court is Defendants' Motion for Summary Judgment filed by Defendants Jeffery A. Beard and Ray J. Sobina. (Dec. 40.) The Court finds that Plaintiff has filed to submit evidence from which a reasonable fact-finder could conclude that Defendants Beard and Sobina, or any other official, acted with deliberate indifference regarding Plaintiff's complaint concerning his continued

incarceration. Accordingly, the Court will grant Defendants' motion. In addition, the Court will dismiss Plaintiff's remaining state law claims for lack of jurisdiction pursuant to § 1331 and 28 U.S.C. § 1367.

BACKGROUND

On April 17, 2000, Plaintiff Ronald K. Scott was convicted of two counts of robbery. On April 27, 2000, Judge Quigley, formerly a defendant in this matter, sentenced Plaintiff to a term of incarceration of twelve to twenty-four years. Plaintiff then appealed this conviction. On July 31, 2001, Judge Rehkamp, also formerly a defendant in this matter, issued an order granting Plaintiff bail pending his appeal. Judge Rehkamp set bail at $35,000.00 to be paid in a form approved by him. After an unsuccessful attempt at posting bail with unencumbered property, Plaintiff posted bail on

February 13, 2002, through a bail bondsman. Plaintiff was not released, however, because of previously imposed detainers. On February 28, 2002, Plaintiff paid all detainers and Judge Rehkamp ordered that Plaintiff be released. A certified copy of the order was sent via United States Postal Service on February 28, 2002, and was received by the Department of Corrections on March 4, 2002. Plaintiff was released on bail that same day.

Plaintiff commenced the instant action *pro se* on May 7, 2003. In the Complaint, Plaintiff alleged violations of both the United States Constitution as well as the Constitution of the Commonwealth of Pennsylvania. Defendants filed the instant motion on February 28, 2005. Plaintiff filed a brief in opposition, to which Defendants replied. The matter if fully briefed and ripe for disposition.

LEGAL STANDARD

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.56(c). A fact is material if proof of its existence or nonexistence might affect the outcome of the suit under the applicable substantive law. Se Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Where there is no material fact in dispute, the moving party need only establish that it is entitled to judgment as a matter of law. Where, however, there is a disputed issue of material fact, summary judgment is appropriate only if the factual dispute is not a genuine one. *See id.* at 248. An issue of

material fact is genuine if "a reasonable jury could return a verdict for the nonmoving party." *Id.*

Where there is a material fact in dispute, the moving party has the initial burden of proving that: (1) there is no genuine issue of material fact; and (2) the moving party is entitled to judgment as a matter of law. See CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: Civil 2D § 2727 (2d ed. 1983). The moving party may present its own evidence or, where the nonmoving party has the burden of proof, simply point out the Court that "the nonmoving party has failed to make a sufficient showing of an essential element of her case." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986).

All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and the entire record must be

examined in the light most favorable to the nonmoving party. See *White v. Westinghouse Elec. Co.*, 862 F.2D 56, 59 (3d Cir. 1988). Once the moving party has satisfied its initial burden, the burden shifts to the nonmoving party to either present affirmative evidence supporting its version of the material facts or to refute the moving party's contention that the facts entitle it to judgment as a matter of law. *See Anderson*, 477 U.S. at 256-257.

The Court need not accept mere conclusory allegations, whether they are made in the complaint or a sworn statement. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990). In deciding a motion for summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

1) Federal Claims

As noted in the Court's previous Memoranda, the Complaint alleges violations of the Fifth, Sixth, Eighth and fourteenth Amendments of the United States Constitution. In the Court's September 9, 2003, Memoranda, all of the Plaintiff's claims brought pursuant to the Fifth, Sixth and Fourteenth Amendments were dismissed for failure to state a claim upon which relief may be granted. (Doc. 16 at 8-15.) Therefore, the only remaining claim against Defendants Beard and Sobina is that they violated the rights afforded Plaintiff under the Eight Amendment by failing to release him from prison upon the order issued by the Honorable C. Joseph Rehkamp on February 28, 2002, because of DOC Policy 11.5.1-4.

In its previous Memorandum, the Court raised the question concerning the proper standard under which Plaintiff's Eight Amendment claim should be evaluated. (Doc. 16 at 15.) The Court noted that under the standard set forth in *Tuner v. Safley*, 482 U.S. 78 (1987), DOC Policy 11.5.1-4 must be reasonably related to legitimate penological interests. (id.) This was in error. Eighth Amendment claims are subject to the more exacting deliberate indifference standard "because the integrity of the criminal justice system depends on full compliance with the Eighth Amendment." *Johnson v. California.*—U.S.--, 125 S. Ct. 1141, 1149-50 (2005). Accordingly, the Court must evaluate the constitutionality of DOC Policy 11.5.1-4 under the standard set forth by the United States Court of Appeals for the Third Circuit in *Moore v. Tartler*, 986 F.2d 682 (3d Cir. 1993).

Plaintiff alleges that DOC Policy 11.5.1-4 caused him to be subject to incarceration without penological justification. To establish § 1983 liability for incarceration without penological justification in violation of the Eighth Amendment, the United States Court of Appeals for the Third Circuit requires the convergence of three elements. Moore, 986 F.2d at 686 (3d Cir. 1993). First, Plaintiff must demonstrate that a prison official had knowledge of Plaintiff's problem, and thus of the risk that unwarranted punishment was being, or would be inflicted. *Id.* Second, Plaintiff must establish that the official either failed to act or took ineffectual action under the circumstances, thus demonstrating a deliberate indifference to the plight of Plaintiff. *Id.* Finally, Plaintiff must show a causal connection between the official's response to the problem and the infliction of the unjustified detention. *Id.*

On February 25, 2002, Plaintiff filed an Inmate's Request to Staff Members. (Doc. 41, Ex. 1-B.) In the request, Plaintiff stated that his incarceration was being continued despite the fact that he had been granted bail. *(id.)* A Department of Corrections official responded to Plaintiff the same day indicating that the delay was caused by a lack of certified paperwork. *(id.)* The evidence also suggests that at the time Plaintiff filed the request, he was not entitled to be released because of the existence of detainers lodged against him. (Doc. 41, Ex. 1 ¶ 8.) The evidence submitted indicates that on February 28, 2002, Plaintiff satisfied the detainers in full. (Doc. 41, Ex. 1 ¶ 9; Doc. 41, Ex. 1-E; Doc. 45, Ex. A ¶ 1.) That same day, Judge Rehkamp ordered Plaintiff be released from incarceration. (Doc. 41, Ex. 1-D.) The order was then sent by the Perry County Sheriff's Department to the Department of

Corrections on February, 28, 2002. (Doc. 41, Ex. 1-C; Doc. 45, Ex. A ¶ 8.) The evidence submitted indicates that a letter from the Perry County Sheriff's Department and Judge Rehkamp's order was received by the Department of Corrections on March 4, 2002. (Doc. 41, Ex. 1 ¶ 9; Doc. 41, Ex. 2 ¶ 7; Doc. 41, Ex. 1-C.) Plaintiff failed to submit any evidence to the contrary. It is undisputed that the Department of Corrections released Plaintiff on March 4, 2002.

Deliberate indifference may be established where a prison official refuses to address a question of incarceration without penological justification brought to his attention by an inmate. *Sample v. Diecks*, 885 F. .2d 1099, 1110 (3d Cir. 1989). Unlike situations where prison officials stood idly by while prisoners' contentions about the legality of their continued detention when unaddressed, there is no

evidence in the instance matter that plaintiff suffered a similar fate. In fact, Plaintiff has filed to submit any evidence from which a reasonable fact-finder could conclude that Defendants Beard or Sobina, or any other official, acted with deliberate indifference. Rather, the evidence suggest quite the opposite. Consequently, the Court will grant Defendant's motion.

2) State Claims

Although never addressed previously, a review of Plaintiff's Complaint reveals that he has asserted violations of various provisions of the Constitution of the commonwealth of Pennsylvania. (Doc. 1 at 5.) The Court may exercise jurisdiction over these claims pursuant to § 1367. Section 1367(a) states:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental

> jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(a). Cases that "derive from a common nucleus of operative fact" with federal claims are part of the same case or controversy. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). The state law claims raised by Plaintiff derive from the same operative facts as the federal law claims, giving the Court jurisdiction under § 1367(a). The Court, however, "may decline to exercise supplemental jurisdiction over a claim under subsection (a) if ... the district court has dismissed

all claims over which it has original jurisdiction ...."28 U.S.C. § 1367(c). The Supreme Court has indicated that "if the federal claims should be dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *United Mine Workers,* 383 U.S. at 726.

Here, the Court will grant summary judgment on the only remaining federal claim. The remaining claims allege violations of various provisions of the Constitution of the Commonwealth of Pennsylvania. The Court declines to exercise jurisdiction over these state law claims. Therefore, the Court will dismiss the remaining state law claims for lack of jurisdiction pursuant to § 1367(c).

CONCLUSION

Plaintiff failed to submit any evidence that Defendants Beard or Sobina, or any other official,

acted with deliberate indifference. Accordingly, the Court will grant Defendants' motion. In addition, the Court will dismiss Plaintiff's remaining state law claims for lack of jurisdiction pursuant to § 1367(c).

An appropriate Order follows:

June 7, 2005
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD K. SCOTT,	:	
	:	
Plaintiff,	:	CIVIL
ACTION NO. 3:03-CV-768	:	
	:	
v.	:	
	:	
(JUDGE CAPUTO)	:	
KEITH B. QUIGLEY, et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

NOW, this 7th day of Jude, 2005, **IT IS HEREBY ORDERED** that:

(1) Defendants' Motion For Summary Judgment (Doc. 40) is **GRANTED.**

(2) Plaintiff's remaining state law claims are **DISMISSED**.

(3) The Clerk of the Court shall mark this case **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

COMMONWEALTH OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS
OF THE 41ST JUDICIAL DISTRICT
PERRY COUNTY BRANCH

RONALD KEVIN SCOTT : NO. 501 OF 1999

ORDER

AND NOW, February 28, 2002, this matter having come forward on a habeas corpus matter,

IT IS HEREBY ORDERED AND DIRECTED that this Court's order dated July 31, 2001, setting bail in the amount of $35,000, in a form to be approved by this Court; is hereby confirmed as it appears to the Court this date that bail has been posted by a bail bondsman,

IT IS FURTHER ORDERED AND DIRECTED that the defendant be released on bail on the standard terms and conditions of bail, with the

additional condition that if the defendant is involved in any criminal activity, then bail shall be revoked.

BY THE COURT,

/s/

C. JOSEPH REHKAMP, JUDGE

cc: DA's Office
Kevin Prosser, Esq.
Probation
File
SCI